AP

[10191/2020]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Inventors	:	Bernd PETZOLD et al.
Serial No.	:	09/960,563
Filing Date	:	September 12, 2001
For	:	NAVIGATIONAL SYSTEM
Group Art Unit	:	3663
Examiner	:	Tuan C. TO
Confirmation No.	:	5731

Mail Stop Appeal Brief-Patents
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Date: December 27, 2007 Reg. No. 36,197

Signature: _____
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APPELLANTS' REPLY BRIEF IN RESPONSE TO EXAMINER'S ANSWER (UNDER 37 C.F.R. § 41.41)

S I R :

In response to the Examiner's Answer mailed on October 31, 2007 regarding the final rejection of claims 16-20, 22-25 and 27-29 in the above-identified application, Applicants submit the following arguments in support of the appeal of the final rejection.

ARGUMENT

The issue presented for review in this case is: a) whether claims 16-20, 22-25 and 27-29 are anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 5,911,773 (Mutsuga"). Applicants respectfully submit that the rejections should be reversed for at least the following reasons.

To anticipate a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim limitation is identically disclosed in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). "The identical invention must be shown in as complete detail as is contained in the claim." M.P.E.P. § 2131. If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). To the extent that the Examiner may be relying on the doctrine of inherent disclosure to support the anticipation rejection, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Claim 25 recites, in relevant parts, the following: "**a reproducing device** configured to reproduce **the calculated first route and the at least one second route for selection by a user**; and a communications unit configured to receive information regarding traffic disruptions on the calculated first route and the at least one second route, the reproducing device configured to reproduce the information regarding the traffic disruptions; wherein **the reproducing device is configured to reproduce the traffic disruptions** one of: a) in the form of **isolines**; and b) in the form of an **isographic diagram**."

In the Examiner's Answer, the Examiner essentially reiterates the arguments previously made during the prosecution, i.e., Fig. 15A of Mutsuga teaches the "isoline"/"isographic diagram" limitation of claim 25. In this regard, Applicants respectfully note that the entire basis of the Examiner's rejection is essentially the Examiner's unsupported, conclusory statement that "isolines are defined generally as lines on a map or chart" (the first, and only, definition of "isolines" was offered, **without any supporting citation**, by the Examiner in the Advisory Action of August 2, 2006), and that this asserted definition of the Examiner should prevail over the Applicants' explicit definition of "isolines" provided in the specification and the widely-

accepted definition of "isolines." However, not only is the Examiner's asserted definition of "isolines" completely unsupported by any authoritative reference (in fact, the Examiner's asserted definition is completely contradicted by the widely-accepted definition of "isolines"), but even if the Examiner could produce some support for the asserted definition, the Applicants' explicit definition of "isolines" should clearly prevail over the Examiner's asserted definition: it is a fundamental rule of claim interpretation that even if the ordinary and customary meaning of a claim term were somehow different from the definition asserted by Applicants (which is clearly not the case in this application), "the inventor's written description of the invention, for example, is **relevant and controlling** insofar as it provides **clear lexicography or disavowal of the ordinary meaning**." C. R. Bard Inc. v. United States Surgical Corp., 73 U.S.P.Q.2 d 1011, 1014 (Fed. Cir. 2004). In this regard, the terms "isolines" and "isographic diagram" are explicitly defined in the Applicants' Specification and clearly illustrated in Figures 2 and 3. For example, "isolines" are defined as "representing boundaries of traffic disruptions having **a constant size**," (original Specification, p. 8, l. 30-31), and Fig. 2 illustrates a plurality of isolines 25, 30, 35, 40, 45 and 50 each defining a geographical area having a particular traffic flow rate (p. 9, l. 1-14). In addition, "isographic diagram" is illustrated in Fig. 3 and clearly defined as a diagram "in which the different regions between the isolines are represented using a different color or brightness." (P. 9, l. 19-23). Accordingly, there is simply no reasonable basis for one of ordinary skill in the art would interpret "isolines" to merely mean "lines on a map or chart," as asserted by the Examiner.

In addition to the above, the widely-accepted definition of the term "isoline" is "a line on a map or chart along which there is a constant value," as can be seen from any dictionary definition. Accordingly, the definition of "isoline" asserted by Applicants is entirely consistent with the widely-accepted definition of the term, and there is absolutely no basis for the Examiner's assertion that any line on a map or chart qualifies as an "isoline."

Independent of the above, to the extent the Examiner contends on page 5 of the Examiner's Answer that "in Figure 15A, the congested section (or traffic disruption as recited in the claim) is presented by the isolines which are formed from each congested point," and that "each congested point located in said congested section have equal value, thus isolines are shown in Figure 15A of Mutsuga," Applicants respectfully submit that these contentions are nonsensical. In contrast to the claimed features recited in claim 25, Figs. 15(A) and 15(B) and the associated description in Mutsuga (col. 9, l. 61 – col. 10, l.3) clearly indicate that **the lines** shown in these

two figures are **routes** for purposes of illustration, and there is absolutely no indication of any "value" associated with "each congested point," let alone that "each congested point located in said congested section have equal value." It is a fundamental rule of claim interpretation that the claims should be given "the broadest reasonable interpretation" that is consistent with the specification and the interpretation that those skilled in the art would reach. (See M.P.E.P. 2111, citing In re Hyatt , 211 F.3d 1367 (Fed. Cir. 2000), and In re Cortright, 165 F.3d 1353 (Fed. Cir. 1999)). Accordingly, given the fact that the lines shown in Fig. 15A are merely **routes** for purposes of illustration, there is absolutely no reasonable interpretation of Mutsuga that would support the conclusion asserted by the Examiner that Mutsuga discloses the claimed feature that "the reproducing device is configured to reproduce the traffic disruptions one of: a) in the form of isolines; and b) in the form of an isographic diagram."

Independent of the above, to the extent the Examiner contends that Fig. 15A Mutsuga shows "both the main route with a congested section and the general road displayed on the device of the navigation system," and therefore Fig. 15A of Mutsuga teaches "**a reproducing device** configured to reproduce the **calculated first route and the at least one second route for selection by a user**; . . . the reproducing device configured to reproduce the information regarding the traffic disruptions [on the calculated first route and the at least one second route]," the actual description of Fig. 15A simply does not support the Examiner's contention. Applicants note that the associated description in Mutsuga specification (col. 9, l. 61 – col. 10, l. 3) clearly indicates that **Fig. 15(A) is merely used to illustrate** a **situation** where "data indicating traffic congestion on the main road has been received," (col. 9, l. 62-64), but there is no indication of an optical display of two routes **for selection by a user**, let alone any indication of an **optical display** of information regarding the traffic disruptions on the calculated first route and the at least one second route. Accordingly, Mutsuga clearly fails to teach or suggest anything relating to "a reproducing device configured to reproduce the calculated first route and the at least one second route for selection by a user; . . . the reproducing device configured to reproduce the information regarding the traffic disruptions [on the calculated first route and the at least one second route]."

For at least the foregoing reasons, Applicants respectfully submit that claims 16-20, 22-25 and 27-29 are not anticipated by Mutsuga.

CONCLUSION

For the preceding reasons, it is respectfully submitted that the rejections of claims 16-20, 22-25 and 27-29 under 35 U.S.C. § 102(b) should be reversed.

While no fees are believed to be due in connection with this paper, the Office is authorized to charge any fees deemed necessary in connection with this paper to Deposit Account No. **11-0600** of Kenyon & Kenyon LLP.

Respectfully submitted,

Dated: December 27, 2007

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